

ISSUE

The issue is whether appellant has met her burden of proof to establish an employment injury on April 26, 2016 in the performance of duty.

FACTUAL HISTORY

On August 9, 2016 appellant, then a 62-year-old window clerk, filed a traumatic injury claim (Form CA-1) alleging that on April 26, 2016 she sustained injuries to her lower back, legs, and left ankle from bending and standing while in the performance of duty. She attributed her conditions to her daily employment duties, which included pushing and pulling mail equipment, continuous lifting, and carrying packages for window services. Appellant stopped work on May 10, 2016. The employing establishment controverted the claim.

In a letter dated August 16, 2016, appellant's supervisor, V.J., indicated that on April 26, 2016 the date of the alleged injury appellant was on scheduled annual leave and was not at work. She related that medical documentation had not been received regarding appellant's absence from work as of May 10, 2016. V.J. also noted that appellant had not reported an accident or injury.

On August 22, 2016 A.C., an employing establishment official, controverted the claim. She explained that appellant submitted her traumatic injury claim on August 9, 2016, some three months and 18 days after the alleged injury. A.C. also noted that appellant had been on annual leave on April 26, 2016. She provided a "PS 3972" absence analysis form.

By development letter dated August 26, 2016, OWCP informed appellant that additional factual and medical evidence was necessary to establish her claim. In an accompanying questionnaire, it asked her to describe in detail how the claimed injury occurred. In particular, OWCP requested that she respond to the employing establishment's challenge that she was on leave on April 26, 2016. It also requested that appellant clarify whether she was claiming a traumatic injury or an occupational disease. OWCP afforded appellant 30 days to submit the necessary evidence.

OWCP received medical reports which included a May 9, 2016 magnetic resonance imaging (MRI) scan of appellant's lumbar spine, and a June 29, 2016 report from a physician assistant.

By decision dated October 6, 2016, OWCP denied appellant's claim. It found that the factual component of the third basic element, fact of injury, had not been established. OWCP explained that appellant had not responded to the factual questionnaire and therefore it could not be determined if the employment events occurred as alleged. It also noted that her failure to report the injury and seek immediate medical attention, along with her failure to explain the delay, cast significant doubt upon the circumstances of her injury.

On October 2, 2017 counsel requested reconsideration and submitted additional evidence, which included appellant's responses to OWCP's questionnaire. He argued that appellant was claiming an occupational disease because it was clear that her exposure occurred over a period

longer than a single workday or shift. Counsel argued that the use of an incorrect form was a technical error and that appellant had established her claim.

Along with the reconsideration request, counsel also submitted appellant's responses to OWCP's questionnaire. Regarding the employing establishment's allegation that she was on leave on April 26, 2016, she explained that she had attended a medical appointment on that date. Regarding the delay in reporting her alleged injury, she described a separate April 13, 2016 incident. Appellant related that she immediately spoke with her supervisor and informed her regarding the April 13, 2016 incident, but her supervisor wrote the date of appellant's doctor's appointment as the date of injury because she could not remember the exact date. In further explanation, she claimed that she was clearing a path on the workroom floor area when some medical booklets and plastic buckets tumbled and scattered everywhere. Appellant indicated that she had to help clear a walking path by continuously bending down and picking up medical booklets and filling up the empty mail buckets. She explained that she had to drag the buckets (weighing 10 to 15 pounds) to the mail receptacles. Appellant related that she felt a shock of pain and sudden pull in her lower spine area while performing these activities.

Appellant also indicated that her immediate supervisor had immediate knowledge of her injury. She explained that she immediately felt throbbing and sensitivity in her lower spine and back pain. Appellant explained that she walked to the finance office and sat down for 10 to 15 minutes to rest. However, the pain did not subside and she took pain medication. Appellant indicated that she stopped working for the rest of the day on April 13, 2016. She also denied any other injury. Appellant described her condition from the date of the injury and the date she first received medical attention. She also clarified that she was claiming an occupational disease. Appellant indicated that she had performed window services for the past 15 years and that her employment duties required bending, stooping, pushing, lifting, and carrying of packages from 5 to 30 pounds, pushing and pulling mail equipment, lifting trays, and standing on her feet for up to six hours per day.

OWCP received reports dated April 26 and July 7, 2016 from Dr. Sireen Gopal, a Board-certified internist. Dr. Gopal noted that appellant had complaints of pain, numbness, and tingling in her lower back radiating into her right buttock, thigh, and leg, which began more than five years before. He explained that appellant did not recall the exact date, but she was at work lifting a bag weighing 30 pounds or more and hurt her back, which worsened in the prior two weeks. Dr. Gopal also indicated that appellant "denies w/c case states it has been closed for year now." He diagnosed radiculopathy, lumbosacral region, other spondylosis with radiculopathy, lumbosacral region, chondrocostal junction syndrome, other spondylosis with radiculopathy, cervical region, and myalgia.

By decision dated December 27, 2017, OWCP denied modification of appellant's claim. It found that the evidence was vague, general, and inconsistent, and cast serious doubt on the validity of the claim for either a traumatic injury or an occupational disease.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the

United States within the meaning of FECA, that the claim was filed within the applicable time limitation, that an injury was sustained while in the performance of duty, as alleged, and that any disability or specific condition for which compensation is claimed are causally related to the employment injury. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.³

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.⁴ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

When an employee claims an injury in the performance of duty, the employee must submit sufficient evidence to establish that he or she experienced a specific event, incident, or exposure occurring at the time, place, and in the manner alleged. He or she must also establish that such event, incident, or exposure caused an injury.⁵ Once an employee establishes an injury in the performance of duty, he or she has the burden of proof to establish that any subsequent medical condition or disability for work, for which he or she claims compensation, is causally related to the accepted injury.⁶

To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and her subsequent course of action. In determining whether a case has been established, such circumstances as late notification of injury, lack of confirmation of injury, and failure to obtain medical treatment may, if otherwise unexplained, cast substantial doubt on the employee's statements. The employee has not met her burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.⁷

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish an employment injury on April 26, 2016 in the performance of duty.

³ *R.C.*, Docket No. 18-1639 (issued February 26, 2019); *Michael E. Smith*, 50 ECAB 313 (1999).

⁴ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *See L.E.*, Docket No. 18-1612 (issued February 25, 2019); *see generally*, *John J. Carlone*, 41 ECAB 354 (1989); *see also* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. § 10.5(q) and (ee) (1999) (occupational disease or illness and traumatic injury defined).

⁶ *See supra* note 3.

⁷ *Betty J. Smith*, 54 ECAB 174 (2002).

Appellant has alleged that on April 26, 2016 she sustained a traumatic injury to her lower back, both legs, and left ankle from bending and standing while in the performance of her employment duties. However, the employing establishment controverted the claim and indicated that appellant was on annual leave on April 26, 2016. The evidence appellant submitted in support of her claim did not establish that she was at work on April 26, 2016, such that she could have sustained injury in the performance of duty on that day. Rather, appellant eventually explained that her supervisor had claimed that the injury occurred on April 26, 2016 because that was a date on which she sought medical treatment. The evidence of record establishes that appellant was treated by Dr. Gopal on April 26, 2016. However, Dr. Gopal specifically noted that she indicated that her pain began more than five years prior. He also indicated that appellant did not recall the exact date, but she was at work lifting a bag weighing 30 pounds or more, and hurt her back. Dr. Gopal also noted that she denied a “w/c case.” As previously noted, it is appellant’s burden to establish that she experienced a specific event, incident, or exposure at the time, place, and in the manner alleged.⁸ The Board finds that appellant has not met her burden of proof to establish that she was at work on April 26, 2016 and she has not established that she performed bending and standing duties which caused back, leg, and left ankle injury.

On appeal counsel asserts that she had established her claim for an occupational disease. However, as noted, appellant’s current claim is for an alleged April 26, 2016 traumatic injury, not an occupational disease.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish an employment injury on April 26, 2016 in the performance of duty.

⁸ *Supra* note 5.

ORDER

IT IS HEREBY ORDERED THAT the December 27, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 2, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board